

FMC Corporation

Executive Offices
200 East Randolph Drive
Chicago Illinois 60601
(312) 861 6000

October 25, 1979

10952
RECORDATION NO. Filed 1425

FMC

OCT 26 1979 - 10 25 AM

Section of Dockets & Service INTERSTATE COMMERCE COMMISSION
Recordation Unit
Interstate Commerce Commission
Room 2227
12th Street and Constitution Avenue NW
Washington, D.C. 20423

9-200A059
OCT 26 1979
Fee \$ 50.00
ICC Washington, D.C.

Gentlemen:

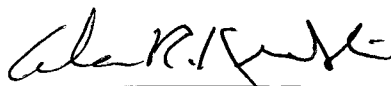
We enclose for filing an executed and acknowledged Lease of 100
one-hundred ton XM boxcars, as follows:

Lessor: FMC Finance Corporation
Lessee: Chattahoochee Industrial Railroad
Car Numbers: CIRR 90201-90300

Our check for \$50 is enclosed. Please stamp and return two copies
to the messenger delivering the above or to our Washington office,
Suite 500, 1627 K Street NW, Washington, D.C. 20006.

Very truly yours,

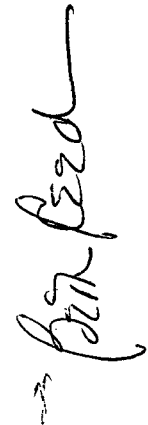
By



Alan R. Kidston
Secretary

ARK/t1

Enclosures





Interstate Commerce Commission
Washington, D.C. 20423

10/26/79

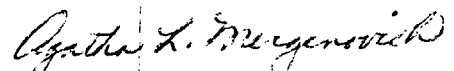
OFFICE OF THE SECRETARY

Alan R. Kidston, Sec.
FMC Corporation
200 East Randolph Drive
Chicago, Illinois 60601

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/26/79 at 10:25am , and assigned re-recording number(s). 10052

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

LEASE AGREEMENT
(CIRR)

10952
RECORDATION NO. Filed 1425

OCT 26 1979 - 10 25 AM

INTERSTATE COMMERCE COMMISSION
THIS LEASE AGREEMENT, made as of the 24th day of September, 1979 between FMC FINANCE CORPORATION, a Delaware corporation, 200 E. Randolph Drive, Chicago, Illinois, 60601 ("Lessor") and CHATTAHOOCHEE INDUSTRIAL RAILROAD, P. O. Box 253, Cedar Springs, Georgia, 31732, a Georgia corporation, ("Lessee").

1. Scope of Agreement

A. Lessee leases American Association of Railroad ("AAR") Class XM general service boxcars ("Itel Cars") from SSI Rail Corp. (a predecessor to Itel Corporation and hereafter referred to as "Itel") pursuant to a lease agreement ("Itel Lease") attached as Exhibit A. Lessee wishes to lease from Lessor, and Lessor agrees to lease to Lessee one hundred 100-ton, 50' 6" XM boxcars with single 12' plug doors, end of car cushioning, AAR Plate C, car numbers CIRR 90201-90300 inclusive ("Cars") on the same terms and conditions as those in the Itel Lease, except as specifically provided otherwise in this Lease Agreement. The parties therefore incorporate the Itel Lease by reference. As so incorporated, for purposes of this Lease Agreement, unless otherwise required by the context of the Itel Lease:

- (i) "SSI" as used in the Itel Lease shall mean FMC Finance Corporation.
- (ii) "Lease Agreement" as used hereafter in this document shall mean the Itel Lease as amended by Amendment No. 1, Equipment Schedule No. 2, attached hereto, and this document;
- (iii) "Cars" as used in this document and the Itel Lease shall mean only the Cars described above and shall not include any Itel Cars.

2. Car Management

Lessee consents to Lessor's appointment of Itel to manage the Cars for Lessor. Lessor reserves the right to terminate Itel as its manager on such terms as Lessor and Itel may establish. In such event, Lessor may perform such services itself or appoint a qualified third party acceptable to Lessee to perform such services, Lessee shall not unreasonably withhold such acceptance. All payments for use of the Cars shall be to Lessor, or as Lessor may otherwise instruct Lessee. Lessee shall not make or remit Payments to Itel unless previously instructed to do so in writing by Lessor.

3. This Lease Agreement shall be governed by and construed according to the laws of the State of Illinois.

4. In referencing paragraphs of this Lease Agreement, "Itel Lease Paragraph ____" shall mean the corresponding paragraph in the Itel Lease as incorporated by reference. All other references to paragraphs in this Lease Agreement shall mean to this document.

5. All notices shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party, as follows:

Lessor: FMC Finance Corporation
200 E. Randolph Drive
Chicago, Illinois 60601
Attention: President

STATE OF Georgia)
COUNTY OF Early)

On this 15th day of October, 1979, before me personally appeared
Paul Angeloff, to me personally known, who being
by me duly sworn says that such person is V.P. & General Mgr. of The
Chattahoochee Industrial Railroad, that the foregoing ~~Equipment~~ ^{LEASE}
~~Agreement~~ ^{Schedule No. 2} was signed on behalf of said corporation by authority of its board
of directors, and such person acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

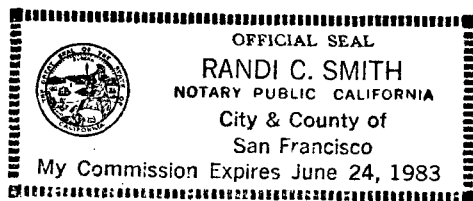
Dave Buckhalter
Notary Public

MY COMMISSION EXPIRES 3-13-1980

STATE OF California)
COUNTY OF San Francisco)

On this 17th day of October, 1979, before me personally appeared
Carl N. Taylor, to me personally known, who being
by me duly sworn says that such person is PRESIDENT of Itel Corporation,
Rail Division, that the foregoing ~~Equipment~~ ^{LEASE AGREEMENT} ~~Schedule No.~~ was signed on behalf of
said corporation by authority of its board of directors, and such person acknowledged
that the execution of the foregoing instrument was the free act and deed of said
corporation.

Rand. C. Smith
Notary Public



Lessee: Chattahoochee Industrial Railroad
P. O. Box 253
Cedar Springs, Georgia 31732
Attention: President

Either party may change its address for notice purposes by notices to the other.

6. FMC and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes in connection with the acquisition of the Cars bearing the identifying numbers CIRR 90201-90300 set forth on Equipment Schedule No. 2 to the Itel Lease. Such Cars shall be new equipment when delivered to Lessee hereunder and FMC agrees to execute such documents as may be required to permit Lessee to claim any investment Tax Credits relating to such Cars."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

FMC FINANCE CORPORATION

CHATTAHOOCHEE INDUSTRIAL
RAILROAD

LESSOR

LESSEE

BY: 



TITLE: Richard K. Loan

President

Vice President & General Manager

DATE: October 25, 1979

October 15, 1979

Itel Waiver and Consent

In consideration of Lessor's agreement to supply Cars to Lessee as provided in the foregoing Lease Agreement and Itel Corporation's ("Itel") appointment by Lessor to manage the Cars, Itel consents to Lessee's agreement to give preference to load to the Cars over Itel cars, waives Itel's right to such priority loadings and the other restrictions of that Lease Agreement dated February 14, 1977 between SSI Rail Corp., a predecessor of Itel (as Lessor) and Lessee to the extent they are inconsistent with this Agreement, and consents to the provisions of Paragraph 2 of this Lease Agreement.

(Seal)

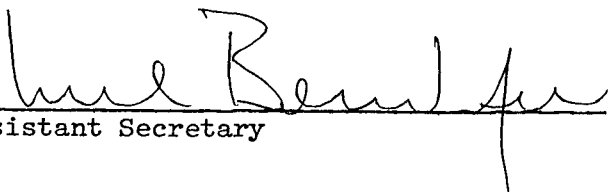
ATTEST:

ITEL CORPORATION, RAIL DIVISION

BY: 

TITLE: President

DATE: 10/17/79


Assistant Secretary

STATE OF Illinois)
COUNTY OF Cook)

On this 25th day of October, 1979, before me personally appeared
Richard Loan, to me personally known, who being by me duly sworn says that
such person is President of FMC Finance Corporation, that the
foregoing Lease was signed on behalf of said corporation by authority of its board
of directors, and such person acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

Gwendolyn Dorsey-Clinton

My Commission Expires May 31, 1983

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 14th day of February, 1977, between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("SSI"), as Lessor, and Chattahoochee Industrial Railroad, a Georgia corporation ("Lessee"), as Lessee.

1. Scope of Agreement

A. SSI agrees to lease to Lessee, and Lessee agrees to lease from SSI, boxcars and/or other railroad equipment of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto whether for boxcars or other railroad equipment, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars".

B. It is the intent of the parties to this Agreement that SSI shall at all times be and remain the lessor of all Boxcars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Boxcars as provided herein. The term of lease with respect to all of the Boxcars described on each Schedule shall be for fifteen (15) years commencing upon the date when all Boxcars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each with respect to all of the Boxcars described on each Schedule, provided, however, that SSI or Lessee may terminate this Agreement as to all, but not fewer than all, of the Boxcars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

3. Supply Provisions

A. SSI will inspect each of the Boxcars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to SSI that the sample Boxcar which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and SSI's determination that the Boxcar conforms to the specifications ordered by SSI and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, SSI will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Boxcars shall be deemed delivered to Lessee upon acceptance by SSI. The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by SSI as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, SSI can neither control nor determine when the Boxcars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay to SSI the rent set forth in this Agreement. To move the Boxcars to Lessee's railroad line and insure optimal use of the Boxcars after the first loading of freight for each Boxcar on the railroad line of Lessee (the "initial loading"), SSI agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and SSI, to issue movement orders with respect to such Boxcars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Boxcars, it shall not lease Boxcars from any other party until all of the Boxcars on the Schedule are placed in service. Unless excused by Paragraph 6E of this Agreement, Lessee shall, at Lessee's option, either (i) give preference to SSI and shall load the Boxcars leased from SSI prior to loading boxcars leased from any other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads, or, (ii) pay to SSI 90 percent of the car hire (including mileage computed at a rate of 75 miles per day) Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the period during which SSI's Boxcars are not given preference; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. The delivery of any Boxcar to Lessee shall be subject to manufacturer's delivery schedules, financing satisfactory to SSI and the mutual acknowledgment of the parties that the addition of such Boxcars is not likely to reduce utilization of all Boxcars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Boxcars listed on the Schedule shall be delivered to Lessee, the term of the lease shall be deemed to have commenced on the date the final Boxcar of the most recent group of Boxcars was delivered to Lessee. Subject to conditions beyond the control of SSI, SSI shall use its best efforts to move all of the Boxcars on the Schedule to the Lessee's railroad tracks prior to December 31, 1977.

4. Railroad Markings and Record Keeping

A. SSI and Lessee agree that on or before delivery of any Boxcars to Lessee, said Boxcars will be lettered with the railroad marking of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. Lessee shall during the term of this Agreement prepare and file all documents relating to the registration, maintenance and record keeping functions involving the Boxcars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents, (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Boxcar leased hereunder shall be registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. SSI shall, if requested by Lessee, perform on behalf of Lessee, all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Boxcars shall be addressed to Lessee at such address as SSI and Lessee shall select.

D. All record keeping performed by Lessee or SSI hereunder and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by Lessee or SSI in a form suitable for reasonable inspection by the other from time to time during regular business hours of the party maintaining the records.

E. Lessee may, at Lessee's option and expense, modify car insignias, logos and colors other than required AAR markings on sixty (60) days prior written notice to SSI. Any such change shall always conform to the provisions of Rule 8 of the Code of Car Service Rules and any other applicable regulations.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, SSI will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Boxcars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee while such Boxcar is in the physical possession of Lessee. Lessee shall inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and shall be liable to SSI for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to SSI for and during the term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by SSI at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to SSI.

B. Except as provided above, SSI shall make or cause to be made such inspections of, and maintenance and repairs to, the Boxcars as may be required. Upon request of SSI, Lessee shall perform any necessary maintenance and repairs to Boxcars on Lessee's railroad tracks as may be reasonably requested by SSI. SSI shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the lease of such Boxcars. Lessee may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any repairs, alterations, improvements or additions to the Boxcars without SSI's prior written consent. If Lessee makes an alteration, improvement or addition to any Boxcar without SSI's prior written consent, Lessee shall be liable to SSI for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with SSI.

C. Lessee will at all times while this Agreement is in effect be responsible for the Boxcars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules--Freight for cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Boxcars while on Lessee's railroad tracks by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish SSI concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with a certificate of insurance with respect to the insurance carried on the Boxcars signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and SSI (or its assignee) as their interests may appear.

D. SSI agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Boxcar and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Boxcar to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. SSI shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. SSI and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. SSI shall review all applicable tax returns prior to filing.

6. Lease Rental

A. Lessee agrees to pay the following rent to SSI for the use of the Boxcars:

(i) SSI shall receive all payments made to Lessee by other railroad companies for their use or handling of the Boxcars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "payments") if the utilization of all of the Boxcars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 90 per cent. For the purpose of this Agreement, utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Boxcars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each year that the Boxcars are on lease to Lessee, commencing from the initial loading (such term referred to as "utilization"). In addition, SSI will receive, as additional rental, all monies earned by the Boxcars prior to their initial loading.

(ii) In the event utilization exceeds 90 per cent in any calendar year, SSI shall receive an amount equal to the SSI Base Rental plus an amount equal to one-half of the payments earned in excess of the SSI Base Rental. For the purpose hereof, SSI Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 90 per cent and the denominator of which is the utilization for such calendar year. (The above determination of SSI Base Rental insures that Lessee will, if utilization is greater than 90 per cent in any calendar year, receive one-half of all the payments made by other railroads for use or handling of the Boxcars in excess of the SSI Base Rental.)

(iii) If SSI pays other railroads to move Boxcars in accordance with Section 3A, except for any payments incurred to deliver such Boxcars to Lessee's railroad line, Lessee shall reimburse SSI for such payments only from and out of the monies received by Lessee pursuant to Subsection 6A(ii).

(iv) The rental charges payable to SSI by Lessee shall be paid from the payments received by Lessee in the following order until SSI receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other, except that penalty payments associated with late payment of car hire monies shall accrue to the party responsible for car accounting.

(v) In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules-- Freight and the appropriate amount due as a result thereof is received by SSI, said damaged or destroyed Boxcar will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within three months after the end of each calendar year. However, since the parties desire that rental payments shall be made currently so that SSI may meet its financial commitments, Lessee shall prepare drafts and deposit drafts or other payment forms covering car rentals, in the bank on or by the 25th of each month. Lessee shall then pay to SSI by the 30th of each month 80 percent of the total car hire earnings including actual mileage earnings when available and estimated earnings based on the current national average miles per day when actual is unavailable. At the time the month's first remittance is made, Lessee shall report for the same month, the dollar figure for 100 percent of the revenue earned. Ten percent of the total car hire revenue shall be remitted to SSI thirty (30) days or one month after the initial monthly payment and the remaining ten percent should be remitted to SSI sixty (60) days or two months after the initial payment. Since the parties desire to adjust the amounts paid pursuant to the above more frequently than at the end of each calendar year, Lessee shall within three (3) months after the end of each calendar quarter, calculate on a cumulative quarterly basis, the approximate amount of rental payment due Lessee. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that following each cumulative quarterly calculation, any amount paid to either party in excess of the amounts required by such quarterly calculations shall be promptly refunded to the appropriate party.

C. In the event utilization in any calendar quarter is less than 87.5 per cent or if at any time during a calendar quarter, the number of days that the Boxcars have not earned car hire payments is such as to make it mathematically certain that the utilization cannot be equal to or greater than 87.5 per cent, SSI may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Boxcars as SSI shall determine.

D. SSI may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire for Boxcars on an annual basis to three months or less without a corresponding increase in straight car hire or other monies available to both SSI and Lessee at least equal in amount to such reduction,

(2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section or (3) require that Lessee spend funds not earned by the Boxcars in order for Lessee to continue to meet its obligations set forth in this section.

E. Subsequent to the initial loading, if a Boxcar remains (i) on Lessee's railroad tracks for more than seven (7) consecutive days, or (ii) thirty (30) consecutive days if caused by a Force Majeure condition or a railroad strike, a shipper strike or shutdown, a shipper equipment outage or a shipper raw material shortage, SSI may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks. While a Boxcar remains on Lessee's railroad tracks because of any condition included in (ii) above, Lessee shall incur no liability for any payment. However, anytime a Boxcar has remained on the Lessee's railroad tracks for more than seven (7) consecutive days, Lessee shall use its best efforts to assist SSI in arranging to have the Boxcar loaded on the tracks of another railroad. SSI shall receive, as additional rental, all monies earned by the Boxcar from the date it is interchanged off the Lessee's railroad tracks, pursuant to the preceding sentence, until it is subsequently loaded on the Lessee's railroad tracks.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Boxcars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by SSI in connection with the acquisition of Boxcars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Boxcars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either SSI or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to

duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default, SSI may, at its option, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear SSI's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate, and thereupon SSI may enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. SSI shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

9. Termination

At the expiration or termination of this Agreement as to any Boxcars, Lessee will surrender possession of such Boxcars to SSI by delivering the same to SSI. A Boxcar shall be no longer subject to this Agreement upon the removal of Lessee's reporting marks from the Boxcar and the placing thereon of such reporting marks as may be designated by SSI, either, at the option of SSI, (1) by Lessee upon return of such Boxcars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Boxcar at the time of or subsequent to termination of the lease term as to such Boxcar. If such Boxcars are not on the railroad line of Lessee upon termination any cost of assembling, delivering, storing, and transporting such Boxcars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by SSI. If such Boxcars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Boxcars and place thereon such markings as may be designated by SSI. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days free storage on its railroad tracks for SSI or the subsequent lessee of any terminated Boxcar. If any Boxcar is terminated pursuant to subsections 6C or 6E or section 8 prior to the end of its lease term Lessee shall be liable to SSI for all costs and expenses incurred by SSI to repaint the Boxcars and place thereon the markings and name or other insignia of SSI's subsequent lessee.

10. Indemnities

SSI will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Boxcars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Boxcars other than loss or physical damage (unless occurring through the fault of Lessee), including without limitation the construction, purchase and delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, or as a result of the use, maintenance, repair replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by SSI or Lessee).

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly

qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to SSI in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither leased nor purchased any new general purpose boxcars.

12. Inspection

SSI shall at any time during normal business hours have the right to enter the Lessee's premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify SSI of any accident connected with the malfunctioning or operation of the Boxcars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify SSI in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar. Lessee shall furnish to SSI promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto

and their respective successors and assigns, except that Lessee may not without the prior written consent of SSI, which consent shall not unreasonably be withheld, assign this Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by SSI in connection with the acquisition of the Boxcars in order to confirm the financing party's interest in and to the Boxcars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars except as a lessee only.

D. No failure or delay by SSI shall constitute a waiver or otherwise affect or impair any right, power or remedy available to SSI nor shall any waiver or indulgence by SSI or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SSI RAIL CORPORATION

BY: 

TITLE: President

DATE: 3-1-77

CHATTAHOOCHEE INDUSTRIAL RAILROAD

BY: 

TITLE: Vice Pres. & Gen. Mgr.

DATE: February 25, 1977

AMENDMENT NO. 1

AMENDMENT NUMBER 1 dated as of May 1, 1979, between ITEL CORPORATION, RAIL DIVISION, successor in interest to SSI Rail Corporation ("SSI"), and the CHATTAHOOCHEE INDUSTRIAL RAILROAD, a Georgia corporation ("Lessee").

W I T N E S S E T H

WHEREAS, SSI and Lessee are parties to a lease dated as of February 14, 1977 ("the Agreement") pursuant to which SSI has delivered 100 Boxcars,

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Lease as follows:

1. All terms defined in the Agreement shall have the defined meanings when used in the Amendment.
2. This Amendment shall be effective as of April 30, 1979 and shall apply only to payments earned subsequent to May 1, 1979.
3. For the purposes of determining the rent for the one hundred Boxcars numbered CIRR 90201 - CIRR 90300 set forth in the Equipment Schedule No. 2 to the Agreement, the number "85.5 per cent" shall be substituted in Section 6A (i) for the number "90 per cent" each time it appears.
4. For only the boxcars bearing the identifying numbers CIRR 90001-90100 and CIRR 90201 - CIRR 90300, Section 3B is hereby amended by deleting such section in its entirety and substituting in lieu thereof, the following:

"B.(a) Lessee agrees that so long as it shall have on lease similar Boxcars, it shall not lease similar Boxcars from any other party until all of the Boxcars on the Schedule, are placed in service. Unless excused by Paragraph 6E of this Agreement, Lessee shall, at Lessee's option, either (1) give preference to SSI and shall load the Boxcars leased from SSI prior to loading boxcars leased from any other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads, (with the exception of Lessee's purchase or leasing Boxcars directly to replace those Boxcars presently on lease from First National Bank of Boston assigned December 12, 1966 from First Bank Corporation under lease dated May 18, 1966 and the 50 Boxcars owned by Lessee prior to the Agreement for a total of 250 boxcars), or, (ii) pay to SSI 86.75 percent of the car hire (including mileage computed at a rate of 65 miles per day) Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the period during which SSI's Boxcars are not given preference; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks and further provided that Lessee shall incur no liability to SSI hereunder and that SSI's sole recourse shall be pursuant to Section 6C of this Agreement.

(b) The Boxcars bearing the identifying numbers CIRR 90201 - 90300 shall be given preference to load to the Boxcars bearing the identifying numbers CIRR 90001 - 90100."

5. The following is hereby added to the Agreement as Section 3D:

"D. Neither party to this Agreement shall be under any obligation to lease to or from the other any freight cars other than those set forth in Equipment Schedule Nos. 1 and 2 hereto."

6. For only the Boxcars bearing the identifying numbers CIRR 90201 - CIRR 90300, Section 6A(ii) is hereby amended by deleting such section in its entirety and substituting, in lieu thereof, the following:

"6A(ii) SSI shall receive all payments up to 85.5 per cent of Boxcar utilization in any calendar year. For utilization between 85.5 per cent and 90 per cent in any calendar year SSI shall receive one-half of all such payments. In no event shall SSI receive payments for utilization in excess of 90 per cent in any calendar year."

7. For only the Boxcars bearing the identifying numbers CIRR 90201 - 90300, Section 6C is hereby amended by deleting such section in its entirety and substituting, in lieu thereof, the following:

"6C In the event the Utilization in any calendar quarter is less than 86.75 per cent, Lessee may at its sole discretion, within ten days of receipt of a notice from SSI of the Utilization for such calendar quarter, pay SSI an amount equal to the difference between the rent (including mileage revenues) SSI received for such calendar quarter and the rent (including mileage charges equal to Minimum Mileage Revenue as defined below) SSI would have received had the Utilization been 86.75 per cent. For the purpose hereof, Minimum Mileage Revenue shall be an amount equal to the current applicable charge per line-haul mile specified in the Code of Car Hire Rules and Interpretation-Freight, multiplied by the number of days in the applicable calendar quarter, multiplied by the number of Cars then subject to the Lease multiplied by 86.75 per cent multiplied by 65 miles per day. In the event Lessee does not pay to SSI the difference between the rent actually received by SSI and the SSI Base Rental, SSI may at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as SSI may determine."

8. Except as expressly modified by the Amendment, all the terms and provisions of the Lease shall remain in full force and effect.

9. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same investment.

ITEL CORPORATION, RAIL DIVISION

BY: Carl H. Lyle

TITLE: President

DATE: 10/17/79

CHATTAHOOCHEE INDUSTRIAL RAILROAD

BY: [Signature]

TITLE: Vice President & General Manager

DATE: October 15, 1979

EQUIPMENT SCHEDULE NO. 2

Itel Corporation, Rail Division hereby leases the following Cars to Chattahoochee Industrial Railroad subject to the terms and conditions of that certain Lease Agreement dated as of February 14, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions Inside			Doors Width	No. of Cars
			Length	Width	Height		
XM	General Purpose 50 foot boxcars with 10" end-of- car cushioning devices.	CIRR 90201-90300	50' 6"	9' 6"	11' 2"	12' Plug	100

ITEL CORPORATION, RAIL DIVISION

BY: Carl M. LyleTITLE: PresidentDATE: 10/17/79

CHATTAHOOCHEE INDUSTRIAL RAILROAD

BY: [Signature]TITLE: Vice President & General Mgr.DATE: October 15, 1979